

Appl. No. 09/711,587

REMARKS

Claims 63-84 are pending in the Application. Claims 63-84 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. More particularly, Examiner has classified the introduction of the term "frustrum portion" as not being disclosed in the specification and therefore new matter. Applicant requests reconsideration of this rejection.

In amending new claims Applicant can employ terms that do not appear in the specification. It should be noted that exact terms need not be used *in haec verba* to satisfy the written description requirement of the first paragraph of 35 U.S.C. 112. *Eiselstein v. Frank*, 52 F.3d 1035, 1038, 34 USPQ.2d 1467, 1470 (Fed. Cir. 1995); *In re Wertheim*, 541 F.2d 257, 265, 191 USPQ 90, 98 (CCPA 1976). See also 37 CFR 1.121(e) which merely requires substantial correspondence between the language of the claims and the language of the specification.

Mere rephrasing of a passage does not constitute new matter. Accordingly, a rewording of a passage where the same meaning remains intact is permissible. *In re Anderson*, 471 F.2d 1237, 176 USPQ 331 (CCPA 1973). The mere inclusion of dictionary or art recognized definitions known at the time of filing an application should not be considered new matter.

Independent claims 63 and 78 both recite a "frustrum portion". Webster's Third New International Dictionary of the English Language Unabridged, a copy of which relevant page is attached hereto, defines a frustrum as the part of a cone-shaped solid next to the base and formed by cutting off the top by a plane parallel to the base. Referring to page 6, lines 14-19 of the specification, emitter structures 20 depicted in Fig. 1 are recited to be "a

Appl. No. 09/11,587

substantially upright silicon-comprising structure comprising a base portion 22 and an end portion 24 above the base portion (end portion 24 can also be referred to as an apex, or tip)." Referring to Page 2, lines 3 and 4 of the specification, emitter tips include those "having tip radii of 100 nanometers". As disclosed by the specification, emitter structures can be round (radii) having an apex or tip and a base portion. In other words, emitter tip structures can be cone shaped. Page 6, lines 13-14, recites "Referring to Fig. 3, material of layer 30 is removed from over apexes 24 but left over base regions 22." As disclosed in the present specification, base region 22 can be considered a frustum portion as frustum is defined by Webster's Third New International Dictionary. As such, the incorporation of the term "frustum portion" in the new claims does not constitute new matter. As frustum portion does not constitute new matter, claims 63-84 comply with the written description requirements of 35 U.S.C. 112, first paragraph. Applicant requests that this rejection be removed in the Examiner's next action.

Claims 63-84 have been rejected as either anticipated or obvious in view of Jones and Takemura. Neither Jones nor Takemura recite coating a tip portion without coating a frustum portion of an emitter tip structure. For at least the reason the cited references either alone or in combination, neither teach nor suggest all the elements of claims 63-84, claims 63-84 are allowable.

Appl. No. 09/11,587

Claims 63-84 are believed to be in immediate condition for allowance. Applicant requests allowance of these claims in the Examiner's next action.

Respectfully submitted,

Dated: 5/24/04By: 

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Webster's Third New International Dictionary

OF THE ENGLISH LANGUAGE
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WITH SEVEN LANGUAGE
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A to G



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